Co. v. *Sawyer,* 160 Mass. 413; *Stuart* v. *Live Stock Ins. Co.,* 38 N. J. L. 436. In the principal case a penalty is provided for non-compliance with the statute and this raises a point concerning which the courts are almost evenly divided, but while a great number hold that such statutes are nevertheless intended as a prohibition against doing business before compliance with the conditions and that contracts made without such compliance and in violation of the statute are none the less illegal and unenforceable, *State* v. *Briggs,* 116 Ind. 55; *Thorne* v. *Travelers' Ins. Co.,* 80 Pa. St. 15, 21 Am. Rep. 89; *Cary-Lombard Lumber Co.* v. *Thomas,* 92 Tenn. 587; *Aetna Ins. Co.* v. *Harvey,* 11 Wis. 398, the weight of authority seems to be that the penalty so prescribed is exclusive and that contracts of foreign corporations made without complying with the requirements of the statute may be enforced. *R. R. Co.* v. *Evans,* 66 Fed. 809, 31 U. S. App. 432; *Fire Ins. Ass'n* v. *Stave & Heading Co.,* 61 Ark. 1, 54 Am. St. Rep. 191; *Kindel* v. *Lithographing Co.,* 19 Col. 310, 314; *Fire Ins. Co.* v. *Whipple,* 61 N. H. 61; *Garrett Ford Co.* v. *Vermont Mfg. Co.,* 20 R. I. 189, 78 Am. St. Rep. 852; *Edison Gen. Electrical Co.* v. *Navigation Co.,* 8 Wash. 370, 40 Am. St. Rep. 910; *Toledo Fire & Lumber Co.* v. *Thomas,* 33 W. Va. 566, 25 Am. St. Rep. 925.

EMINENT DOMAIN—WHAT CONSTITUTES A PUBLIC USE.—The plaintiff sought an injunction to restrain the condemnation of a strip of land. The land was to be subsequently resold by the city with building restrictions to preserve light, view, appearance, etc., for an adjoining public park. The condemnation was authorized by statute and ordinance. *Held,* that the legislative acts were unconstitutional, the property not being taken for a public use. *Penn. Mut. Life Ins. Co.* v. *Phila.* (Pa. 1913), 88 Atl. 904.

The instant case may be distinguished from *Atty. Gen.* v. *Williams,* 174 Mass. 476, 55 N. E. 77, the leading case on the condemnation of the right to light, air, etc. In the latter case, the court allowed the taking of the easement alone, while in the principal case, the council attempted to go further and take the property itself. Were the decision based upon the ground that more was taken than was necessary, it would undoubtedly be sound. *Shawnee Co. Commrs.* v. *Beckwith,* 10 Kas. 603; *Taylor* v. *Balt.* 45 Md. 576; *Clark* v. *Worcester,* 125 Mass. 226; *Wash. Cem.* v. *Prospect Park and C. I. R. Co.,* 68 N. Y. 591. But the court reaches its conclusion by defining a public use to be an actual use, or a right to actual use by the public. What constitutes a public use is a question which has provided a great variety of answers. The decisions may, however, be divided into two general groups, those taking the position above stated, and those declaring a public use to be that use which inures in any way to the public benefit or advantage. An excellent note on the general subject, and full citation of authorities for each of the above positions will be found in 22 L. R. A. (N. S.) 20 et seq.

EVIDENCE—PUBLIC RECORDS—PRIVILEGED COMMUNICATIONS.—X took out a policy in the relator Insurance Co. A few months later he was committed to the Michigan Asylum for the Insane. Immediately thereafter the Insurance company filed a bill in chancery to cancel the policy, alleging that it had been secured by false and fraudulent representations. X died while suit was

pending. The Insurance company then commenced mandamus proceedings against the Board of Trustees of the Asylum to compel them to open the medical records of the institution for its inspection, claiming that the information sought was necessary to prepare for trial of the above mentioned cause. *Held,* that these were not public records and were protected from disclosure by the statutory privilege accorded communications between physician and patient. *Mass. Mutual Life Ins. Co.* v. *Board of Trustees of Mich. Asylum* (Mich. 1913), 20 Det. Legal News, 980, 144 N. W. 538.

Act No. 76 of the public acts of 1903 provides that officers having custody of public records shall furnish proper and reasonable facilities for their inspection, but it was practically conceded by relator that the records of the medical superintendent of the asylum were without the purview of this enactment. The question decided was, therefore, whether, in the absence of statute, the records kept by the medical superintendent, containing information acquired by him in his professional capacity, were open to inspection. That the contents of such records would be within the statutory privilege unless they were public records, is clear, and it is immaterial that the services of the physician were rendered without the request and even without the consent of the patient. *Smart* v. *Kansas City,* 208 Mo. 162; *Renihan* v. *Dennin,* 103 N. Y. 573; *Meyer* v. *Supreme Lodge, Knights of Pythias,* 178 N. Y. 63; *Freel* v. *Market St. Ry.,* 97 Cal. 40. Emphasis is laid by the court on the fact that the records sought to be inspected by relator were not kept under a general law of the state. It has been frequently held that records kept under a city ordinance or local act, and containing information acquired by a physician in his professional capacity are privileged. *Sovereign Camp, W. O. W.* v. *Crandon,* 64 Neb. 39; *Davis* v. *Supreme Lodge, Knights of Honor,* 165 N. Y. 159; *Buffalo Loan Ass'n* v. *Masonic Aid Ass'n,* 126 N. Y. 450. When the duty to record is imposed by a general law of the state, a different situation arises. Seemingly, in such a case, the records should be public, and their contents not privileged. *McKinstry* v. *Collins & Lowell,* 74 Vt. 147; *Henessy* v. *Ins. Co.* 74 Conn. 699. See also *Krapp* v. *Metropolitan Life Ins. Co.,* 143 Mich. 369. In this case a certificate of death made and filed by the attending physician in accordance with a state law was held competent evidence, although the information it contained had been acquired by the physician in his professional capacity. The decision here rested, however, on § 4617 of the Revised Statutes of 1897, which in terms makes such certificates admissible in evidence. It is doubtful whether, in the absence of some statutory provision such as governed the *Krapp* case, the medical records of an insane asylum would be competent evidence in this state even if kept under a state law.

HUSBAND AND WIFE—LIABILITY OF HUSBAND FOR NECESSARIES.—Plaintiff, an attorney, was employed by defendant, who was charged with murder, to defend him in the criminal trial. Defendant's wife, after he had been committed to jail, became violently insane, and plaintiff rendered services in connection with her commitment to an asylum. *Held,* although the services were not expressly contracted for, they were necessaries for which defendant was liable. *Moran* v. *Montz,* (Mo. App. 1913), 162 S. W. 323.